

## VISITS OF CONSULAR OFFICERS TO CITIZENS IN PENAL INSTITUTIONS

*Exchange of notes at Ottawa July 29 and September 19, 1935*  
*Entered into force September 19, 1935*

1935 For. Rel. (II) 58

*The American Chargé d'Affaires ad interim to the Secretary of State  
for External Affairs*

OTTAWA, CANADA  
*July 29, 1935*

No. 523

SIR:

I have the honor to refer to Dr. Skelton's informal note of April 27, 1935, in regard to the cases of Francis and Charles Aiken, in which Dr. Skelton stated that "the reciprocal understanding arrived at in 1934 between Canada and the United States of America to permit Consular representatives of either country, upon application to the wardens of penal institutions, to visit citizens of their own country serving sentences in such institutions still obtains".

In this connection I transmit herewith enclosed for your information copy of a letter dated June 7, 1934, from the Acting Attorney General of the United States to the Secretary of State of the United States regarding the rule in existence governing the visits of consular officers to Federal penal institutions in the United States.

In this connection I also wish to refer to circular letter No. 174, dated September 19, 1933, from the Office of the Superintendent of Penitentiaries, entitled "Convicts in Penitentiaries Who Are Citizens of Foreign Countries", and which deals with the question of visits to such convicts by the consular representative of the country of which the convict claims to be a citizen.

It would appear to my Government that "the reciprocal understanding arrived at in 1934" referred to by Dr. Skelton has reference to the correspondence above mentioned.

In compliance with instructions from my Government, therefore, I have the honor to inquire whether this understanding on the part of the Government of the United States is correct and whether the Canadian Government

will grant permission that its note of April 27, 1935, above referred to and the circular letter of September 19, 1933, may be printed.

This confirmation of the understanding is considered necessary by the Secretary of State in order that it may be included in the Department's Executive Agreement Series.

With reference to circular letter No. 174 of September 19, 1933, to which reference is made above, it is observed that wardens are required to transmit applications from American consular officers to visit prisoners to the Superintendent of Prisons at Ottawa. It is, however, my understanding that the appropriate Canadian authorities are now agreeable to permitting direct communication between the American consul and the warden concerned but that the warden may refer the consul's communications to higher authority before replying, should this be deemed advisable. As some uncertainty exists as to the practice actually followed by the wardens of penitentiaries in Canada with respect to requests of American consular officers to interview American prisoners, I have the honor to request to be informed whether my understanding of the actual practice obtaining today as set forth above is correct.

I avail myself of the occasion to renew to you, Sir, the assurances of my highest consideration.

PIERRE DE L. BOAL  
*Chargé d'Affaires a.i.*

Enclosure.

The Right Honorable  
THE SECRETARY OF STATE  
FOR EXTERNAL AFFAIRS,  
*Ottawa, Canada.*

[ENCLOSURE]

OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON, D. C.

JUNE 7, 1934

The Honorable  
The Secretary of State

MY DEAR MR. SECRETARY:

This is in reply to your communication of June 2, 1934, in which you request to be advised as to the rule in existence in American prisons governing the visits of consular officers.

In reply thereto I am giving you the full text of the rule governing in Federal penal institutions:

Whenever it has been determined to the satisfaction of the warden that a prisoner is a citizen of a foreign country, visits by the consular representative

of such foreign country, or other duly accredited delegates having legitimate business with such prisoner, shall be permitted by the warden at reasonable hours. This privilege shall not be withheld even though the inmate is undergoing punishment by solitary confinement or under other disciplinary control.

You will observe that no special instructions appear in this rule as to the presence of an officer during the interview. That would be determined by conditions in the institution, by the character of the prisoner and perhaps would be affected by the request of the consular representative.

In the Federal prison system all ordinary visits to inmates are made in the presence of a guard, not only for the purpose of protecting the visitor but of preventing the introduction of contraband. In most cases the Guard does not make any effort to and does not actually hear the conversation between the prisoner and his visitor.

In rare cases where government prosecuting agencies have suspicions or for other reasons, it is deemed advisable to have a special officer present at the interview in order that no important communications may take place between them.

While there is no separate rule, I am confident that it would be the disposition of our wardens and superintendents to permit interviews by prisoners with their consular representatives in the presence of a guard but not within his hearing, unless it had been established that the prisoner had previously abused such a privilege.

I note with satisfaction from the memorandum enclosed with your letter that the case of Elmer Geller, alias John O'Brien, is being satisfactorily adjusted.

Yours very truly,

WILLIAM STANLEY  
*Acting Attorney General*

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*The Secretary of State for External Affairs to the American Minister*

DEPARTMENT OF  
EXTERNAL AFFAIRS  
CANADA

No. 106

OTTAWA, *September 19, 1935*

SIR,

I have the honour to refer to Mr. Boal's Note No. 523, dated the 29th July, 1935, with reference to the reciprocal understanding arrived at in 1934 between Canada and the United States, to permit Consular representatives of either Country, on application to the Wardens of penal institutions, to visit citizens of their own Countries serving sentences in such institutions.

The Department of Justice has informed me that the essential document, in so far as this Country is concerned, is Regulation No. 131, in its revised form, a copy of which is transmitted herewith for your information.

With regard to the questions concerning the channel of communication, dealt with in the seventh paragraph of your note, the Superintendent of Penitentiaries has confirmed your understanding of the actual practice obtaining today, as set forth therein.

Accept, Sir, the renewed assurances of my highest consideration.

O. D. SKELTON  
for  
*Secretary of State  
for External Affairs*

The Honourable NORMAN ARMOUR,  
*Envoy Extraordinary and  
Minister Plenipotentiary  
of the United States of America,  
Ottawa, Canada.*

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[ENCLOSURE]

OFFICE OF THE  
SUPERINTENDENT OF PENITENTIARIES

Circular No. 17/1934

OTTAWA, *February 21st, 1934*

The Wardens,  
All Penitentiaries.

Re—Penitentiary Regulations, 1933/131.

Re—Visits to Convicts by Consular Agents, U.S.A.

1. The following regulation has been approved by the Honourable the Minister of Justice and will come into effect upon the receipt of this communication:

“131. Whereas reciprocal arrangements have been agreed upon with the United States of America, whenever it has been determined to the satisfaction of the Warden that a convict is a citizen of the United States of America, visits by the Consular Representative of that country, or other duly accredited delegates, having legitimate business with such convict, shall be permitted by the Warden, at reasonable hours. This privilege shall not be withheld even though the convict is undergoing punishment by solitary confinement, or under other disciplinary control.”

D. M. ORMOND  
*Superintendent*